explanation, how unsold materials could help them. In fact, the seized materials should have been retained by the plaintiffs for no more than the time required to enable their solicitors to complete a proper inventory to replace the crude tally sheets which in July 1989 and before judgment was entered, they were still exhibiting to their affidavits. On this, see *Columbia Picture Industries* v *Robinson*[1] per Scott J at p 440.

Before appealing against my order of 20 September 1989, the plaintiffs sought the opportunity to present further arguments under s 34(2) of the Supreme Court of Judicature Act (Cap 332, 1985 Ed). Before the further arguments could be heard, however, I was informed that the seized materials in the warehouse had been removed from their original container and placed in another location, and that they were no longer in the separate piles into which they had been re-sorted at the joint inspection held on 3 May 1989. While the removal had been done by the warehousemen, from a continuation without the knowledge of the plaintiffs' solicitors, the episode only brought home more clearly the risk, if the seized materials continued to be with the plaintiffs' solicitors, of a breach of the plaintiffs' undertakings with regard to safe custody.

At the hearing of the further arguments on 3 October 1989, the plaintiffs only sought a variation of my previous order of 20 September 1989. They offered two alternatives: to pay the defendants $4,000 for the seized materials ordered to be returned; or to replace them with identical publications from their own stocks free of charge. They still maintained that the seized materials were necessary as evidence, but now they disclosed for the first time that their main concern was to prevent pirated or unauthorized reproductions from being reintroduced into the Singapore market. It was still not explained in these further arguments how unsold copies of counterfeit materials could be used as evidence to quantify damages. Preventing the possible reintroduction of unauthorized reproductions into the Singapore market was a much more relevant consideration. However, there did not appear to me to be any risk of the defendants doing this, in view of their ready admissions of liability and the existence of the injunctions which the Singapore courts have shown themselves competent to enforce.

The plaintiffs have already had judgment entered in their favour, and in my judgment they should get down to having their damages quantified, and finalizing this matter. I therefore made a supplemental order for the parties to arrange a second joint inspection within 28 days, so that the publications to be returned under the order of court of 20 September 1989 could be reidentified and the orders carried out, with liberty to apply.

Application allowed.

Solicitors: *Allen & Gledhill; Murphy & Dunbar.*

Reported by *Terence Tan Bian Chye*

Lee Wee Hiong & Anor (administrators of the estate of Lee Liak Meng (deceased)) & Ors v Victor Koh Ah Sai & Ors

HIGH COURT (SINGAPORE) — SUIT NO 164 OF 1983
YONG PUNG HOW J
13 NOVEMBER 1989

Damages (Personal Injury or Death) — Loss of life — Estate's loss of earnings claims — CPF savings — Rate to be used — Dependency claims — Whether CPF contributions of deceased had he lived should be included — General damages of injured party — Claim for anxiety neurosis — Civil Law Act (Cap 43, 1985 Ed), ss 8, 9 & 12

A motor car driven by the first defendant ran into and knocked down the deceased and the second and third plaintiffs who were all standing on the divider, waiting to cross the road. The first defendant was trying to overtake another motor car driven by the second defendant, which was itself moving out from its lane to avoid a road sweeping vehicle driven by a servant or agent of the government of the Republic of Singapore. Arising from the accident, the widow of the deceased and her brother as administrators of the estate of the deceased, together with the second and third plaintiffs, brought an action against the first defendant for damages. The second and third plaintiffs claimed damages for personal injuries and consequential loss. The second and third defendants were joined as parties by an order of court.

Before the hearing commenced, liability was admitted by the first defendant as to 65% and by the second defendant as to 35%. In the course of the hearing, the parties also agreed on a multiplier of 10 to be applied in determining lost years' earnings, and on the following amount of damages:

a) $7,000 for loss of expectation of life;
b) $5,000 for funeral expenses;
c) $750 for cost of letters of administration;
d) $3,000 general damages and $100 special damages for the second plaintiff;
e) $8,200 special damages for the third plaintiff.

At the date of his death, the deceased was 46 years old, and was in good health. He had worked for bus companies. As a ticket inspector in 1975, his earnings had been $345 per month. He had risen to be a chief ticket inspector in 1978 with earnings of $660 per month, and at the date of his death he was earning a gross salary of $1,020.43 per month.

Held:

(1) The cause of action having arisen in 1981, the claim for the estate of the deceased was made under s 8 of the Civil Law Act (Cap 43, 1985 Ed) ('the Act') before the coming into force of the 1987 amendments.

(2) In assessing the damages to be awarded, the agreement on a multiplier of 10 reduces the problem of determining the loss of future earnings during the 'lost years' to a narrower problem of determining the multiplicand. By its very nature it does not readily allow itself to be an exercise in mathematical precision. What is needed is a fair and reasonable assessment of what the net future earnings might be, bearing in mind that earnings are subject to all the vagaries of life.

(3) A net income per year of $19,000 would be fair, after adding the employer's Central Provident Fund ('CPF') contributions and after making allowances and provisions for income tax.

(4) From this estimate of the loss of earnings during the lost years, there should be deducted the amount which the deceased would have spent exclusively for his own living and other expenses, as these would be expenses which would be saved by his death.

(5) Although the exact CPF rate varied from time to time, the court should use a figure of 40% of net prospective earnings as the amount unless there is persuasive evidence in a particular case that this would not be appropriate. In the present case, this would also appear to result in a fair and reasonable assessment of the available surplus.

(6) Damages to the first plaintiffs for the estate of the deceased should therefore be:

General damages	
Lost years' earnings	$76,000
Loss of expectation of life	$ 7,000
Special damages	
Funeral expenses	$ 5,000
Cost of letters of administration	$ 750

(6) Section 9 of the Act empowered the court to award interest on damages. In this case, interest should be calculated at 6% pa on the amount for loss of expectation of life and for special damages, from the date of the writ to the date of judgment. As the deceased died intestate, the general damages will be apportioned one-half to the widow and one-sixth to each of the three sons.

(7) The deceased left a widow and three sons. Damages are also claimed for their benefit as the dependants of the deceased. Under s 12 of the Act, such damages can be awarded as are proportionate to the losses resulting from the death to the dependants respectively, and are based entirely on the financial loss to them.

(8) The purpose of an award of damages is to provide the widow and other dependants of the deceased with a capital sum, which, with prudent management, will be sufficient to supply them with material benefits of the same standard and duration as would have been provided for them out of the earnings of the deceased had he not been killed by the tortious act of the defendant.

(9) There were several ways of approaching a valuation of a dependency. An acceptable method was to estimate the amounts which the deceased could have been expected to provide for the widow and for each of the three sons had he lived, based on the estimates of his likely net earnings and their needs during the relevant years in which he would have provided for each of them.

(10) An issue which was raised in argument before the court was whether the dependency of the three sons should include an estimate of the loss of the additional CPF contributions which could have been expected, had the deceased lived. It was submitted by the plaintiffs that this would have been covered by the general claim for damages by the dependants for having been 'deprived of the pecuniary and other benefits which they would have received had the deceased continued to live'. But the defendants contended that there has not been sufficient evidence in this case for the court to come to any conclusion that the children would be entitled to the benefits from these additional CPF contributions which have been lost.

(11) The principle that the loss attributable to the cessation of contributions to the CPF forms part of a dependency claim can no longer be in doubt since the Privy Council decision in *Singapore Bus Service (1978) Ltd* v *Lim Soon Yong*.[3]

(12) There have been several significant variations in the rates of the respective contributions. Nevertheless, it is possible to make a calculation to arrive at an appropriate figure, bearing in mind that what is arrived at is the accelerated receipt of a lump sum which should be discounted.

(13) Interest should be calculated at 3% pa on the amount of damages for dependency from the date of the accident until the date of judgment.

(14) As the dependents are also beneficiaries of the estate, the awards to them as dependants will be reduced in each case by the respective amounts received through the estate as beneficiaries.

(15) As regards the second plaintiff's claim, her general damages for pain and suffering were agreed during the hearing on which interest should be calculated at 6% pa from the date of the writ to the date of judgment.

(16) With regard to the third plaintiff's claim for general damages, although a Malaysian case had awarded damages for anxiety neurosis, in the present case, the medical evidence on this aspect of her condition after the accident showed that she suffered no more than the mental anxiety that would have been the normal reaction after such an accident. She informed the court that she considered herself to have been cured, her complaints had not affected her work and had not prevented her from being promoted. The court did not feel justified in acceding to the submission to award additional damages under another head of claim. In addition to the agreed special damages of $8,200, a fair award for general damages should be $15,000, with interest on both sums at 6% pa from the date of the writ to the date of judgment.

Cases referred to

1 *Chan Heng Wah & Anor* v *Peh Thiam Choh & Anor* [1988] 1 MLJ 74 (folld)
2 *Mallet* v *McMonagle* [1970] AC 166 (folld)
3 *Singapore Bus Service (1978) Ltd* v *Lim Soon Yong* [1985] 2 MLJ 267; [1983] 2 MLJ 306 (folld)
4 *Wong Siew Yock* v *Wang Chee Meng* [1985] 2 MLJ cxlix (distd)

Legislation referred to

Civil Law Act (Cap 43, 1985 Ed) ss 8, 9, 12

Karuppan Chettiar for the plaintiffs.
S Vellupillai for the first defendant.
Leong Wai Yin for the second defendant and third party.
Teng Chieh Schen for the Attorney General.

Cur Adv Vult

Yong Pung How J: On 31 August 1981 a motor car driven by the first defendant along Braddell Road towards Thomson Road mounted the road divider and ran into and knocked down Lee Liak Meng ('the deceased') and the second and third plaintiffs who were all standing on the divider, waiting to cross the road. At the time, the first defendant was trying to overtake another motor car driven by Siau Kee Min, the second defendant, which was itself moving out from its lane to avoid a road sweeping vehicle driven by a servant or agent of the government of the Republic of Singapore. Arising from the accident, Tan Sor Joo, the widow of the deceased, and her brother Tan

Lee Heng, as administrators of the estate of the deceased, together with the second and third plaintiffs brought an action against the first defendant for damages. The administrators as the first plaintiffs claimed damages for the estate of the deceased and also for the benefit of the dependants of the deceased. The second and third plaintiffs claimed damages for personal injuries and consequential loss.

The first defendant joined Siau Kee Min as a third party, claiming an indemnity or a contribution against the claims of the plaintiffs. By an order of court, Siau Kee Min and the Attorney General were joined as the second and third defendants. Tan Sor Joo, the widow, died on 19 June 1983 and, by another order of court, her son Lee Wee Hiong, who had succeeded her as the administrator of the estate of the deceased, was substituted as a plaintiff in this action in her place.

Before the hearing commenced, liability was admitted by the first defendant as to 65% and by the second defendant as to 35%, and the action against the Attorney General was dismissed by consent, with no order as to costs. In the course of the hearing, the parties also agreed on a multiplier of 10 to be applied in determining lost years' earnings, and on the following amounts of damages:

a) $7,000 for loss of expectation of life;
b) $5,000 for funeral expenses;
c) $750 for cost of letters of administration;
d) $3,000 general damages and $100 special damages for the second plaintiff;
e) $8,200 special damages for the third plaintiff.

At the date of his death, the deceased was 46 years of age and was in good health. He had worked for bus companies since 1955, when he was about 19 years of age. His last employer was Singapore Bus Service (1978) Ltd ('SBS') whose senior personnel officer was able to produce the records of his employment with SBS from 1973 and to give evidence on them. As a ticket inspector in 1975, his earnings had been $345 per month. He had risen to be a chief ticket inspector in 1978 with earnings of $660 per month, and at the date of his death he was earning a gross salary of $1,020.43 per month from which his take-home amount was $796.43 per month. He was entitled to the one month annual wage supplement, or 13th month salary, common in Singapore employment. If he were alive at the date of the trial, he would have got beyond the Grade I salary range ($550-1,300) into the Grade II salary range ($700 -1,600) for a chief ticket inspector. Beyond this, there would be the Grade III salary range ($1,000- 1,800), but for this he would have had to be promoted to the rank of assistant superintendent. There might also have been other earnings if he had lived; for example, in 1986, 1987 and 1988 he would have been entitled, like other employees, to a 'productivity bonus', of the equivalent in his case of five and a half days pay or about $300 in 1986, 11 days pay or about $600 in 1987 and 16 1/2 days pay or about $900 in 1988. He could have continued employment with SBS until the normal retirement age of 65.

Estate's claim

The cause of action having arisen in 1981, the claim for the estate of the deceased was made under s 8 of the Civil Law Act (Cap 43, 1985 Ed) ('the Act') before the coming into force of the 1987 amendments. In assessing the damages to be awarded, the agreement on a multiplier of 10 reduces the problem of determining the loss of future earnings during the 'lost years' to a narrower problem of determining the multiplicand. This is nevertheless still a guess at what the average net earnings should be over the relevant period of years, if he had lived, and by its very nature does not readily allow itself to be an exercise in mathematical precision, including possibly separate calculations for different periods of his working life. Neither need it be an attempt at arriving at average or median figures through several ranges of possibilities. What is needed is a fair and reasonable assessment of what the net future earnings might be, bearing in mind that earnings are subject to all the vagaries of life. In this case, having considered the usual contingencies and speculative elements, a net income per year of $19,000 would be fair, after adding the employer's Central Provident Fund (CPF) contributions and after making allowances and provisions for income tax. Applying the agreed multiplier of ten years gives us a figure of $190,000.

From this estimate of the loss of earnings during the lost years, there should be deducted the amount which the deceased would have spent exclusively for his own living and other expenses, as these would be expenses which would be saved by his death. In *Chan Heng Wah & Anor* v *Peh Thiam Choh & Anor*,[1] the Court of Appeal reviewed a number of leading authorities on the subject and considered the factors which might be taken into account in determining what the available surplus might be after the deduction of the deceased's living expenses. In particular, it considered the important factor in the Singapore context of the existence of the scheme of enforced savings provided under the Central Provident Fund Act, and came to the conclusion that the available surplus in that case should be 40% of the net prospective earnings. In my view, while each case must necessarily be decided on its own facts, there appears to be merit in using 40% as a conventional figure to follow in Singapore, unless there is persuasive evidence in a particular case that this would not be appropriate. In the present case, this would also appear to result in a fair and reasonable assessment of the available surplus. Accordingly, we would derive from it an available surplus of 40% of $190,000, or $76,000.

Damages to the first plaintiffs for the estate of the deceased should therefore be:

General damages	
Lost years' earnings	$76,000
Loss of expectation of life	$ 7,000
Special Damages	
Funeral expenses	$ 5,000
Cost of letters of administration	$ 750

Section 9 of the Act empowers the court to award interest on damages. In this case, interest should be calculated at 6% pa on the amounts for loss of expectation of life, and for special damages, from the date of the writ, 11 January 1983, to the date of judgment. As the deceased died intestate, the general damages will be apportioned one-half to the widow and one-sixth to each of the three sons.

Dependants' claim

The deceased left a widow aged 40 at the date of his death and three sons aged 16, 15 and 6 respectively for whom damages are now claimed for their benefit as the dependants of the deceased. Under s 12 of the Act, such damages can be awarded as are proportionate to the losses resulting from the death to the dependants respectively, and are based entirely on the financial loss to them. The method to be used in calculating such damages has been described by Lord Diplock in *Mallet* v *McMonagle*[2] at p 174:

> The purpose of an award of damages under the Fatal Accidents Acts [(Northern Ireland) 1846 to 1959] is to provide the widow and other dependants of the deceased with a capital sum, which, with prudent management, will be sufficient to supply them with material benefits of the same standard and duration as would have been provided for them out of the earnings of the deceased had he not been killed by the tortious act of the defendant, credit being given for the value and material benefits which will accrue to them (otherwise than as the fruits of insurance) as a result of his death.
>
> To assess the damages it is necessary to form a view upon three matters each of which is in greater or lesser degree one of speculation: (1) the value of the material benefits for his dependants which the deceased would have provided out of his earnings for each year in the future during which he would have provided for them, had he not been killed; (2) the value of any material benefits which the dependants will be able to obtain in each such year from sources (other than insurance) which would not have been available to them had the deceased lived but which will become available to them as a result of his death; (3) the amount of the capital sum which, with prudent management, will produce annual amounts equal to the difference between (1) and (2) (that is 'the dependency') for each of the years during which the deceased would have provided material benefits for the dependants, had he not been killed.

The authorities indicate that there are several ways of approaching a valuation of a dependency. Before me, the method chosen by counsel for both the plaintiffs and the first and second defendants was to estimate the amounts which the deceased could have been expected to provide for the widow and for each of the three sons had he lived, based on the estimates of his likely net earnings and their needs during the relevant years in which he would have provided for each of them. This is an acceptable method of valuation, and I have followed it.

The deceased was not a high earner, and the only asset he left on his death was the family flat. In fact, he had not been earning enough on his earnings alone to provide for the needs of his family, with a wife and three children; it was admitted by the first son in his evidence that, even in the lifetime of the deceased, it had been necessary for the widow at least from time to time to supplement the deceased's earnings with her own earnings from sewing. Although he was a smoker, his own needs and resulting personal expenses must necessarily have been small, but his work as a ticket inspector involved very long shifts which meant that he had to eat two meals outside his home each working day. The morning shift was for more than eight hours, and the afternoon shift did not end until after the last bus.

The widow was 40 years old when the deceased died on 31 August 1981, and she herself died on 19 June 1983. Although she was no longer able to give evidence, I formed the impression from the evidence of both her brother and her first son that, with the help of relatives and the deceased's CPF savings, she kept the family together. The first son, who gave evidence, was 16 when the deceased died. After secondary school, in which the fees were $5 per month, he went on to the Ngee Ann Polytechnic in the 1984/1985 academic year and graduated in 1988. The annual fees at the Polytechnic during his four years there were $627, $696, $816 and $666 respectively. In his last year, he was the recipient of a Ngee Ann bursary of $600. It is clear that the cost of tertiary education for his children would not have been within the financial means of the deceased, and the first son acknowledged in evidence that, if the deceased had lived, he might have had to find part-time work during this period. He enlisted in the Republic of Singapore Navy in June 1988 after graduation, and is now a naval officer. The second son was 15 when the deceased died. He finished secondary school and is now an engineering mechanic with the Singapore Armed Forces. The third son was only six when the deceased died. He is now in Secondary Two on the technical side with an interest in metalwork. He should have three or four more years of education, before doing his National Service for two and a half years. Of the three sons, the period of his expected dependency would be the longest.

An issue which was raised in argument before me was whether the dependency of the three sons should include an estimate of the loss of the additional CPF contributions which could have been expected, had the deceased lived. This had not been pleaded as such, but it was submitted by counsel for the plaintiffs that this would have been covered by the general claim for damages by the dependants

for having been 'deprived of the pecuniary and other benefits which they would have received had the deceased continued to live'. It was contended by counsel for the first and second defendants that there has not been sufficient evidence in this case for the court to come to any conclusion that the children would be entitled to the benefits from these additional CPF contributions which have been lost. In my view, the principle that the loss attributable to the cessation of contributions to the CPF forms part of a dependency claim can no longer be in doubt since the Privy Council decision in *Singapore Bus Service (1978) Ltd* v *Lim Soon Yong*,[3] dismissing an appeal from the decision of the Singapore Court of Appeal. Any calculation of CPF contributions which have been lost in such circumstances can be a frustrating exercise: even where the initial problem of estimating the future salaries is reduced, as in this case, there have been several significant variations in the rates of the respective contributions even during the period from 1 July 1980 to the date of hearing. Nevertheless it is possible to make a calculation to arrive at an appropriate figure, bearing in mind that what is arrived at is the accelerated receipt of a lump sum which should be discounted.

In the result, I have calculated the dependency as follows:

	Dependency	Expectation from CPF	Total
(1) Widow (died 19 June 1983: 21 1/2 months at $250 pm)	$5,375	—	$5,375
(2) First son (6 years) First 2 years: $2,400 Next 4 years: $8,000	$10,400	$12,000	$22,400
(3) Second son (3 years) for 3 years: $3,600	$3,600	$12,000	$15,600
(4) Third son (12 years) First 3 years: $3,600 Next 5 years: $9,000 Next 4 years: $14,400	$27,000	$12,000	$39,000

Interest should be calculated at 3% pa on the amounts of damages for dependency from the date of the accident, 31 August 1981, until the date of judgment. In the case of the third son, interest should be calculated only in respect of his pre-trial dependency up to the date of judgment, and no interest should be added for the remaining period of dependency.

As the dependants are also beneficiaries of the estate, the awards to them as dependants will be reduced in each case by the respective amounts received through the estate as beneficiaries. Where the apportionment to a beneficiary of the estate is greater than the award as a dependant, as in the case of the widow, the award as a beneficiary will stand, and the awards as a dependant will be eliminated.

Second plaintiff's claim

For the second plaintiff, her general damages for pain and suffering were agreed during the hearing at $3,000 with special damages previously agreed at $100, making a total of $3,100 on which interest should be calculated at 6% pa from the date of the writ to the date of judgment.

Third plaintiff's claim

The third plaintiff was a clerk typist, 24 years old at the time of the accident, and described herself as a marketing co-ordinator at the hearing. In her case, special damages had been agreed at $8,200, and it was only left for general damages to be assessed by the court. The evidence of Dr Low Yin Peng, the consultant orthopaedic surgeon and head of the department of orthopaedic surgery at Toa Payoh Hospital, who examined her both in 1982 and again in 1988, was that she sustained a serious fracture to the lower end of her right femur which required a protracted period of treatment. Her fracture united with internal fixation. There was a re-fracture due to a stress-riser in one of the drill holes in the bone. The complication was managed well with conservative treatment.

She was left with the following disabilities: 1 cm shortening in the right femur; 1.5cm muscle wasting of the right thigh; flexion contracture of the right knee; tender defect on the medial side of the right femur. In addition, she was left with a 24.5cm surgical scar on the lateral aspect of the right thigh.

Under cross-examination, Dr Low clarified that the 1cm shortening was minimal, the muscle wasting could be improved by exercise, and should not affect her daily activities. She could have returned to work as a clerical officer. She could enjoy 'social sports', and do a normal housewife's work. All in all, she could lead a normal life.

Among the numerous precedents on damages for similar injuries which were made available to the court by counsel for both the plaintiffs and the first and second defendants, I was referred by her counsel to the brief note on the Malaysian case of *Wong Siew Yock* v *Wang Chee Meng*[4] in which an award of $10,000 was made for anxiety neurosis. As the case was not fully reported, we have no detailed information on the nature and extent of the anxiety neurosis which led to the award in that case. In the present case, however, the medical evidence on this aspect of her condition after the accident showed that she suffered no more than the mental anxiety that would have been the normal reaction after such an accident. She ceased to seek medical

attention on this aspect after June 1982, and, in giving evidence, she informed the court that she considered herself to have been cured, her complaints had not affected her work and had not prevented her from being promoted. In all the circumstances, I do not feel justified in acceding to the submission to award additional damages under another head of claim. I am of the view that, in addition to the agreed special damages of $8,200, a fair award for general damages should be $15,000. She should have interest on both sums at 6% pa from the date of the writ to the date of judgment.

The first and second defendants have admitted liability as to 65% by the first defendant and as to 35% by the second defendant. The first, second and third plaintiffs should also have their costs.

Order accordingly.

Solicitors: *Murphy & Dunbar*; *Donaldson & Burkinshaw*; *Leong & Gay*.

Reported by *Terence Tan Bian Chye*

BRUNEI REPORTS

Hanshim Corp Sdn Bhd v New York Plastic Co Pte Ltd

COURT OF APPEAL (BANDAR SERI BEGAWAN) — CIVIL APPEAL NO 5 OF 1989
D CONS AG PRESIDENT, HUNTER AND BOKHARY COMMISSIONERS
16 NOVEMBER 1989

Contract — Building contract — Agreement by parties to undertake sub-contracting work — Terms of payment — Payment for 'additional work' — Whether 'additional work' or requests for extra work part of sub-contract agreement

Civil Procedure — Appeal — Questions of fact decided by trial judge — Duty of appellate court in reviewing trial judge's conclusions

Words and Phrases — 'Additional work' — Meaning of in building contract

The plaintiffs and defendants had agreed to bid for steel and metal sub-contract work for an extension to the Brunei International Airport, upon the basis that the defendants would be the nominal sub-contractors, while the work should be done by or on behalf of the plaintiffs. The defendants were to receive a commission of 12% of the cost of the work. The defendants were appointed as sub-contractors. There was no formal sub-contract document and no provision was made permitting variations without vitiation of the contract or for the valuation of extra work. The basic obligation of the sub-contractor was to carry out the works specified and priced in the bill of quantities prepared by the main contractor, at the rates stated, subject to final measurement.

The defendants invited the plaintiffs to perform the work, by a letter which is identical in terms to the letter they had received from the main contractor. This letter was accepted by the plaintiffs subject to a variation which provided that the plaintiffs would pay the defendants 12% commission based on an amount not exceeding the estimated bill of quantities ('BQ') figures.

Further, 'additional work amount exceeding estimated BQ quotation shall be paid a commission of 10% only'. The plaintiffs in turn sub-contracted the work to another contractor.

The dispute between the parties centred on the final account as between them. The plaintiffs claim, inter alia, for unauthorized payments that had been made by the defendants to the sub-contractor who had actually done the work, and damages measured by 10% of the cost of the additional work, arising from the defendants' failure to inform them of requests for such work, under the agreement.

Held, dismissing the defendants' appeal:

(1) The defendants had agreed to the final account with the main contractor without any reference at all to the plaintiffs, despite the relationship between them. This was because much of the final account dealt with additional work which had been concealed from the plaintiffs.

(2) The appellate court was satisfied that the lower court was correct in its finding that no authorization had been given by the plaintiffs to the defendants for payments to be made to the sub-contractor engaged by the plaintiffs to do the work. The trial